

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DAPHNE P. RAND, by and through
DEBRA L. DOLCH, as Conservator of
the Person and Estate of DAPHNE P.
RAND, Conservatee, on Behalf of
Themselves and All Others Similarly
Situating,

Plaintiff,

v.

AMERICAN NATIONAL
INSURANCE COMPANY, a Texas
corporation,

Defendant.

Case No. CV 09-0639-SI

CLASS ACTION

~~PROPOSED~~ FINAL ORDER: (1)
APPROVING CLASS ACTION
SETTLEMENT, (2) AWARDING
CLASS COUNSEL FEES AND
EXPENSES, (3) AWARDING CLASS
REPRESENTATIVE SERVICE
AWARD, AND (4) DISMISSING
ACTION WITH PREJUDICE

JUDGE: Hon. Susan Illston
DATE: September 22, 2011
TIME: 9:00 a.m.
CTRM: 10 – 19th Floor

Following a hearing on July 7, 2011 (“Preliminary Approval Hearing”), this
Court entered its Order (1) preliminarily approving class action settlement, (2)
directing distribution of the Class Action Settlement Notice, and (3) setting a
Fairness Hearing, (Doc. No. 183) (“Preliminary Approval Order”), preliminarily
approving the Settlement entered into by the parties in the above-captioned Action,
and scheduling a hearing to determine whether the Settlement is fair, reasonable,

1 adequate, in the best interests of the Class, and free from collusion, whether the
2 Settlement should be finally approved by the Court, and to consider a motion by
3 Class Counsel for an award of attorneys' fees, expenses, and service award for the
4 Class Representative ("Fairness Hearing").

5 The Court has considered: (i) the memorandum submitted in support of the
6 motion for final approval of the Settlement ("Final Approval Motion"); (ii) the
7 declarations and exhibits submitted in support of the Final Approval Motion; (iii)
8 the memorandum submitted in support of the motion for an award of attorneys'
9 fees, reimbursement of costs, and approval of the service award for the Class
10 Representative ("Fee Motion"), filed August 8, 2011 (Doc. No. 187); (iv) the
11 declarations and exhibits submitted in support of the Fee Motion, filed August 8,
12 2011 (Doc. Nos. 188-193); (v) the Settlement Agreement, filed May 27, 2011
13 (Doc. No. 182); (vi) the entire record in this proceeding, including but not limited
14 to the memorandum in support of preliminary approval of the Settlement, filed
15 May 27, 2011 (Doc. No. 181); (vi) the full and fair notices provided to the Class of
16 the pendency of this action, the Settlement, the Fairness Hearing, and Class
17 Members' rights with respect to this class action lawsuit and Settlement; (vii) the
18 relatively few members of the class certified by the Court who requested exclusion
19 pursuant to their right to do so at the time the notice of the pendency of this class
20 action; (viii) the existence of zero objections to the Settlement, out of more than
21 23,000 Class Members; (ix) the oral presentations of Class Counsel and Counsel
22 for American National at the Preliminary Approval Hearing and Fairness Hearing;
23 (x) this Court's experiences and observations while presiding over this matter, and
24 the Court's file herein; and (xi) the relevant law.

25 Based upon these considerations, the Court's findings of fact and
26 conclusions of law as set forth in the Preliminary Approval Order and in this Final
27 Order: (1) Approving Class Action Settlement, (2) Awarding Class Counsel Fees
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1 and Expenses, (3) Awarding Class Representative Service Fees, and (4)
2 Dismissing Action with Prejudice (“Final Approval Order”), and good cause
3 appearing:
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5 **IT IS HEREBY ORDERED AND DECREED**, as follows:
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7 **1. Definitions.** The capitalized terms used in this Final Approval Order shall
8 have the meanings and/or definitions given to them in the Settlement Agreement,
9 or if not defined therein, the meanings and/or definitions given to them in this Final
10 Approval Order.
11

12 **2. Incorporation of Documents.** This Final Approval Order incorporates and
13 makes a part hereof:

14 A. the Parties’ Settlement Agreement, filed May 27, 2011 (Doc. No.
15 182), which sets forth the terms and provisions of the proposed settlement
16 (“Settlement Agreement” or “Settlement”);

17 B. the Court’s findings and conclusions contained in its Preliminary
18 Approval Order dated June 8, 2011 (Doc. No. 183) (“Preliminary Approval
19 Order”).
20

21 **3. Jurisdiction.** The Court has personal jurisdiction over the Parties, the Class
22 Members (as defined below at paragraph 4). The Court has subject matter
23 jurisdiction over this action, including, without limitation, jurisdiction to approve
24 the Settlement to settle and release all claims alleged in the action and all claims
25 released by the Settlement, including the Released Claims (as defined in the
26 Settlement Agreement) to adjudicate any objections submitted to the proposed
27 Settlement, and to dismiss this Action with prejudice. All Class Members, by
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1 failing to exclude themselves according to the Court's prior orders and the terms of
2 the prior notice of the pendency of the Action, have consented to the jurisdiction of
3 this Court for purposes of this action and the Settlement of this Action.

4
5 **4. Definition of the Class and Class Members.** The "Class," which is
6 comprised of "Class Members," means and includes any entity, trust or natural
7 person who is an Owner of an Annuity that was purchased by a resident of, and/or
8 issued within, the State of California between the period from January 1, 2002 to
9 and including December 31, 2010 and was an Active Annuity or an Annuitized
10 Annuity at any time on or after February 9, 2005; except that, "Class," "Settlement
11 Class," "Class Member" and "Class Members" does not include an entity, trust or
12 person (a) who is or was an Owner of an Annuity (i) that was issued but not
13 accepted or was returned to the Company as part of the exercise of the free-look
14 provision in the Annuity or was otherwise rescinded, (ii) that validly and timely
15 requests an exclusion from the Class or; (b) who signed a document that released
16 American National from claims that are or would be Released Claims; (c) whose
17 rights and claims respecting the Annuity have been finally adjudicated in a court of
18 law; (d) who is or was a member of the Board of Directors, an officer, shareholder
19 or employee of American National at any time between January 1, 2002 and
20 December 31, 2010, as well as the affiliates, legal representatives, attorneys,
21 successors, or assigns of American National; (e) who is a judge, justice, or judicial
22 official presiding over the Action or is with the staff or immediate family of such
23 judge, justice or official; or (f) who is a person or entity hired to administer the
24 terms of the Agreement.

25 All Class Members are subject to this Final Approval Order and Final
26 Judgment to be entered by the Clerk of the Court in accordance herewith.

1 **5. Findings and Conclusions.** The Court finds that the Settlement was not the
2 product of collusion or any other indicia of unfairness, is fair, reasonable, and
3 adequate to the Class in light of the complexity, expense, and likely duration of the
4 litigation (including appellate proceedings), and the risks involved in establishing
5 liability, damages, and in maintaining the action as a class action, through trial and
6 appeal. The Court finds that the Settlement represents a fair and complete
7 resolution of all claims asserted in a representative capacity on behalf of the Class
8 and should fully and finally resolve all such claims. In support of these findings
9 and conclusions, the Court further finds:

10 A. There is no evidence of collusion. The proposed settlement, as set
11 forth in the Settlement Agreement, resulted from extensive arms-length
12 negotiation. The Action was extensively and vigorously litigated (as further
13 described below), prior to any settlement. Plaintiff and American National
14 engaged in intensive arms-length negotiations, including meeting on multiple
15 occasions, participating in several substantive telephone conferences, and
16 exchanging numerous emails and proposals. Counsel for the parties attended face-
17 to-face meetings, participated in periodic conference calls and collectively worked
18 several hundred hours to reach the terms embodied in the Settlement.

19 B. The Settlement provides for substantial cash benefits to be paid or
20 credited automatically by American National to every Class Member, without
21 requiring any Class Member to affirmatively participate in a claims process. No
22 portion of the substantial cash benefit will be consumed by attorneys' fees, litigation
23 expenses, notice expenses, settlement administration expenses, or the requested
24 service award for Plaintiff, since such amounts are all separately provided for. The
25 Court has considered the realistic range of outcomes in this matter, including the
26 amount Class Members might receive if they prevailed at trial, the strength and
27 weaknesses of the case, the novelty and number of the complex legal issues
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1 involved, the risk that Class Members could receive less than the relief provided for
2 in the Settlement, and the risk that Class Members could receive nothing if the case
3 were to be concluded by trial. The amount offered by the Settlement is fair,
4 reasonable, and adequate in view of these factors.

5 C. Before reaching the proposed settlement, Plaintiff and American
6 National fully and vigorously litigated their claims and defenses in extensive
7 proceedings before this Court. A detailed procedural history of this action is set
8 forth in the Court's docket, and is described in the Joint Declaration of Andrew S.
9 Friedman and Ingrid M. Evans in Support of Plaintiff's Memorandum in Support
10 of Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and
11 Service Award, filed August 8, 2011 (Doc. No. 188) ("Joint Declaration" or "Joint
12 Decl."). Among other things, American National's challenge to the pleadings and
13 motion for partial summary judgment, and Plaintiff's cross-motion for partial
14 summary judgment, were all heard and decided prior to Settlement. Class Counsel
15 tirelessly litigated this action while attempting, in good faith, to achieve a just, fair
16 and amicable resolution.

17 D. Before reaching the proposed settlement, Plaintiff and American
18 National also conducted extensive discovery. This extensive fact discovery
19 included the depositions of seven American National managers, four sets of
20 document requests and five sets of interrogatories covering a wide array of subject
21 matter areas, and subpoenas to numerous actuarial and financial consultants and
22 insurance agents affiliated with American National. Plaintiff also deposed
23 American National's financial and economic expert, which required extensive and
24 specialized preparation. Plaintiff also served American National with Rule
25 30(b)(6) deposition notices, requesting that Defendant designate individuals
26 knowledgeable to testify on several subject matter areas, including Defendant's
27 corporate organization, computer systems, policies and procedures, agent training,
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1 agent oversight, agent compensation, sales materials, and product development and
2 features. Written discovery was no less comprehensive. In response to Plaintiff's
3 requests for production of documents, and over the course of months of meet and
4 confer negotiations regarding topics such as electronically stored information
5 ("ESI"), document custodians and search terms, Defendant produced over 350,000
6 pages. Class Counsel reviewed, coded and analyzed each of these documents.
7 Class Counsel also retained and consulted with multiple experts concerning the
8 merits of Plaintiff's claims and the defenses raised by American National. Plaintiff
9 consulted with regulatory, actuarial, and financial experts to assist in preparation of
10 the litigation and motion practice. Plaintiff also served multiple subpoenas *duces*
11 *tecum*, seeking materials from American National's agents, marketing
12 organizations, auditors, and investment managers. After engaging in extensive
13 meet and confer sessions with many of these third parties, Plaintiff obtained and
14 reviewed a substantial number of documents relevant to Plaintiff's allegations in
15 this Action.

16 E. Based upon the vigorous litigation of relevant legal issues before this
17 Court and extensive investigation of the underlying facts in discovery, Plaintiff and
18 American National were fully informed of the legal bases for the claims and
19 defenses herein, and capable of balancing the risks of continued litigation (both
20 before this Court and on appeal) and the benefits of the proposed settlement.

21 F. The Class is and was at all times adequately represented by Plaintiff
22 and Class Counsel, including in entering into and implementing the Settlement,
23 and has satisfied the requirements of the Federal Rules of Civil Procedure Rule 23,
24 and applicable law. Class Counsel submit that they have fully and competently
25 prosecuted all causes of action, claims, theories of liability, and remedies
26 reasonably available to the Class Members. Further, both Class Counsel and
27 American National's Counsel are highly experienced trial lawyers with specialized
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1 knowledge in insurance and annuity litigation, and complex class action litigation
2 generally. Class Counsel and American National's Counsel are capable of
3 properly assessing the risks, expenses, and duration of continued litigation,
4 including at trial and on appeal. Class Counsel submits that the Settlement is fair,
5 reasonable and adequate for the Class Members. American National denies all
6 allegations of wrongdoing and disclaims any liability with respect to any and all
7 claims alleged by Plaintiffs and the Class, including their claims regarding the
8 propriety of class certification, but agrees that the proposed settlement will provide
9 substantial benefits to Class Members. American National considers it desirable to
10 resolve the Action to finally put Plaintiffs' and the Class' claims to rest and avoid,
11 among other things, the risks of continued litigation, the expenditure of time and
12 resources necessary to proceed through trial and any subsequent appeals, and
13 interference with ongoing business operations.

14 G. The selection of American National to act as the Settlement
15 Administrator was reasonable and appropriate given the structure of the settlement
16 and location of the database used to identify and provide contact information for
17 Class Member.

18 H. As further addressed below, through the mailing of the Class Notice
19 Package in the form and manner ordered by the Court, the Class has received the
20 best practicable notice of the pendency of this action, of the Settlement, the
21 Fairness Hearing, and of Class Members' rights and options, including their rights
22 to opt out, to object to the settlement, and/or to appear at the Fairness Hearing in
23 support of a properly submitted objection, and of the binding effect of the Orders
24 and Judgment in this Action, whether favorable or unfavorable, on all Class
25 Members. Said notices have fully satisfied all notice requirements under the law,
26 including the Federal Rules of Civil Procedure and all due process rights under the
27 U.S. Constitution and California Constitution.

1 I. The response of the Class to this Action, the certification of a class in
2 the Action, and to the Settlement, including Class Counsel's application for an
3 award of attorneys' fees, litigation expenses, and the class representatives' service
4 award, after full, fair, and effective notice thereof, strongly favors final approval of
5 the Settlement. Out of the 23,635 Class Notice Packages that were mailed to the
6 Class Members, only 48 valid requests for exclusion were received and zero
7 objections were received.

8 J. As set forth in the Settlement, American National has denied, and
9 continues to deny, any wrongdoing or liability relating to the Action.

10
11 **6. Class Notice Package and of Right to Opt Out.** The Court hereby finds
12 that the "Class Notice Package" in the Action was mailed to the Class beginning
13 the week of July 11, 2011 through July 18, 2011 in the form and manner approved
14 by the Court in its order of June 8, 2011 (Doc. No. 183). The Court finds that all of
15 the notices are written in simple terminology, are readily understandable by Class Members,
16 and comply with the Federal Judicial Center's illustrative class action notices. The Court
17 finds that said notice provided fair and effective notice to the Class of the
18 Settlement and the terms thereof, including but not limited to those terms related to
19 the Class recovery and the Settlement benefits, the claims and parties released, the
20 binding effect of the Settlement (if approved) on all Class Members, the provisions
21 for attorneys' fees, litigation expenses, administrative expenses, and Plaintiff's
22 service award, Class Counsel's intention to petition for an award of such fees,
23 expenses, and service award in the maximum amounts permitted under the
24 Settlement, the date, time and place of the Final Approval Hearing, and Class
25 Members' right to object to the Settlement and to appear at the Fairness Hearing
26 (on their own or through counsel of their own selection, at their own expense) and
27 Class Members' right to opt out of the Settlement, as all set forth in the Class
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1 Notice Package. The Court finds that said form and manner of giving notice,
2 including the steps taken for updating the Class notice mailing database, re-mailing
3 any returned notices, and receiving and responding to Class Member inquiries
4 (including the support services to be provided by the Settlement Administrator and
5 Class Counsel), was the best notice practicable, and was reasonably calculated,
6 under the circumstances, to apprise the Class Members of their rights, and fully
7 satisfied the requirements of due process and all other applicable provisions of law.
8 The Court further finds that the Class Members were afforded a reasonable period
9 of time to exercise such right.

10 Based on the foregoing, the prior notices of pendency and the Class Notice
11 Package, in the forms and manners approved by the Court, collectively fully satisfy
12 the requirements of due process, the United States and California Constitutions, the
13 Federal Rules of Civil Procedure, and all other applicable provisions of law.

14
15 **7. Requests for Exclusion.** After the mailing of the 23,635 Class Notice
16 Packages, only 48 timely and valid requests for exclusion have been received. No
17 other untimely and/or invalid requests for exclusion were received. A list of those
18 persons and entities who have timely and validly requested exclusion from the
19 Class, according to the terms of the Class Notice and the Court's orders regarding
20 said notices, was filed with the Court in support of final settlement approval as
21 Exhibit A to Declaration of Joseph R. Russo in Support of Defendant's
22 Administrative Motion to File Under Seal A List Reflecting All Requests for
23 Exclusion, and is incorporated herein and made a part hereof. The persons and
24 Annuities on that list are the timely opt-outs, are excluded from the Class, shall not
25 be bound by the Settlement or Judgment in the Action, and shall not receive any
26 benefit under the Settlement.

1 **8. Class Member Objections.** As set forth in detail *supra*, full and fair notice
2 of Class Members' right to object to the proposed settlement and to appear at the
3 Fairness Hearing in support of such an objection has been provided in the form and
4 manner required by the Settlement Agreement, the Court's Preliminary Approval
5 Order, the requirements of due process, and any other applicable law. The
6 deadline for objection expired on August 29, 2011. There were zero (0) objections
7 to the Settlement.¹ No person has requested leave to appear at the Fairness
8 Hearing to object to the Settlement.

9
10 **9. Final Settlement Approval and Binding Affect.** The terms and provisions
11 of the Settlement have been entered into in good faith, and are fair, reasonable and
12 adequate as to, and in the best interests of, the Parties and the Class Members, and
13 in full compliance with all applicable requirements of the Federal Rules of Civil
14 Procedure, the United States Constitution (including the Due Process Clause), the
15 California Constitution, and any other applicable law. Therefore, the Settlement is
16 approved. The Settlement, this Final Order and the Judgment to be entered shall
17 be forever binding on Plaintiff and all other Class Members, as well as their heirs,
18 executors and administrators, successors and assigns, or anyone claiming through
19 them and shall have *res judicata* and other preclusive effect in all pending and
20 future claims, lawsuits or other proceedings maintained by or on behalf of any such
21 persons to the extent those claims, lawsuits, or other proceedings involve matters
22 that were or could have been raised in this Action or are otherwise encompassed by
23 the Settlement Agreement.

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25
26 ¹ Class Counsel received a letter dated August 26, 2011 from Mr. Barry Smith, a
27 Class Member, indicating that he objected to the proposed Settlement. *See* Joint
28 Final App. Decl., at ¶2. But on September 15, 2011, Mr. Smith withdrew his
objection. *Id.*; *see also* Exhibits A-B, attached to Joint Final App. Decl.

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2 **10. Implementation of Settlement.** The parties are directed to implement the
3 Settlement according to its terms and conditions. American National is authorized,
4 at its sole option and in its sole discretion, in accordance with the terms of the
5 Settlement Agreement, and without requiring further approval of the Court, to
6 implement the Settlement before the Final Settlement Date (as defined in the
7 Settlement Agreement).

8
9 **11. Release.** The Release set forth in Section IX of the Settlement Agreement is
10 expressly incorporated herein in all respects, is effective as of the date of the entry
11 of this Final Order, and forever discharges the Released Parties from any claims or
12 liabilities released by the Settlement, including the Released Claims (as those
13 terms are defined in the Settlement Agreement). While fully expressed in the
14 Settlement Agreement, this Release covers, without limitation, any and all claims
15 for attorneys' fees and expenses, costs or disbursements incurred by Class Counsel
16 or other counsel representing Plaintiff or Class Members in this Action, the
17 settlement of this Action, the administration of such Settlement, and the Released
18 Claims, except to the extent otherwise specified in this Order and the Settlement
19 Agreement. The Release applies to all Class Members irrespective of the Class
20 Member's actual deposit or use of credits or payments made under the Settlement
21 Agreement.

22
23 **12. Permanent Injunction.** All Class Members their attorneys, spouses,
24 beneficiaries, executors, administrators, conservators, personal representatives,
25 wards, heirs, predecessors, successors, affiliates, agents, assigns and/or their
26 representatives and those persons in active concert or participation with Class
27 Members are hereby permanently enjoined from filing, commencing, prosecuting,
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1 intervening in, maintaining, participating (as class members or otherwise) in, or
2 receiving any benefits from, any lawsuit (including putative class action lawsuits),
3 arbitration, administrative or regulatory proceeding or order in any jurisdiction,
4 based on, or relating to the claims or causes of actions or the facts alleged in or
5 underlying the Action or asserting any claims released by this Settlement; and from
6 organizing Class Members into a separate class for purposes of pursuing as a
7 purported class action any lawsuit (including by seeking to amend a pending
8 complaint to include class allegations, or seeking class certification in a pending
9 action), based on, or relating to the claims or causes of actions or the facts alleged
10 in or underlying the Action or asserting any claims released by this Settlement.
11 Nothing in this paragraph, however, shall require any Class Member to take any
12 affirmative action with regard to other pending class action litigation in which they
13 may be absent class members. The Court finds that issuance of this permanent
14 injunction is necessary and appropriate in the aid of the Court's jurisdiction over
15 the Action and its judgments. Any person found in contempt of this injunction
16 may be subject to sanctions. Any Released Party who must seek from the Court
17 the compliance of a Releasing Party, as defined in the Settlement Agreement, who
18 is in violation of this injunction, is entitled to reimbursement of his or her or its
19 attorneys' fees incurred as a result of seeking such compliance.

20
21 **13. Enforcement of Settlement.** Nothing in this Final Order shall preclude any
22 action to enforce or interpret the terms of the Settlement Agreement. Any action to
23 enforce or interpret the terms of the Settlement Agreement shall be brought solely
24 in this Court.

25
26 **14. Attorneys' Fees and Litigation Expenses.** The Court orders that Class
27 Counsel shall be entitled to an award of reasonable attorneys' fees and litigation
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1 expenses incurred in connection with the Action and in reaching this Settlement, to
2 be paid by American National at the time and in the manner provided in the
3 Settlement. The Court finds that an award of reasonable attorneys' fees and
4 litigation expenses, as provided for herein, is appropriate based on the contractual
5 agreement to pay such fees and expenses set forth in the Settlement and the Court's
6 equitable powers under California law.

7 The Court finds to be reasonable, and awards to Class Counsel, attorneys'
8 fees and litigation expenses, to be paid as provided in the Settlement, in the total
9 amount of three-million dollars and no cents (\$3,000,000.00). The Court further
10 orders that in accordance with the Settlement, in addition to the foregoing award of
11 litigation expenses, American National shall pay all reasonable settlement notice
12 and administration expenses billed thereby in connection with the Settlement,
13 consistent with the terms of the Settlement and any additional work requested by
14 the Parties jointly.

15 The award of attorneys' fees and litigation expenses to Class Counsel in this
16 Final Approval Order shall be the sole reimbursement to which Class Counsel is
17 entitled from American National or Released Parties with respect to the Action, the
18 Settlement, or the administration of the Settlement. American National and
19 Released Parties shall have no obligation to pay attorneys' fees or costs or
20 litigation expenses with respect to the Action, the Settlement, or the administration
21 of the Settlement, to any other person, firm, or entity other than as provided in this
22 Final Order. Neither Plaintiff, nor any other Class Member, shall have any
23 obligation to pay Class Counsel any further amounts for attorneys' fees, costs, or
24 litigation expenses in the Action. Neither Plaintiff, nor any other Class Member,
25 shall be entitled to seek or receive any further payment of attorneys' fees or
26 litigation expenses in connection with the Action from American National or any
27 Released Parties.

1 Pursuant to the Settlement, American National does not oppose an award of
2 attorneys' fees or reimbursement of costs, as provided for by Section X of the
3 Settlement.

4 In support of the foregoing attorneys' fee and litigation expense award, the
5 Court finds as follows:

6 A. The following hourly billing rates are reasonable in light of the
7 complexity of this litigation, the work performed, Class Counsels' reputation,
8 experience, and competence, and the prevailing billing rates for comparably
9 complex work by comparable qualified counsel in the relevant market:

- 10 1. for Bonnett, Fairbourn, Friedman & Balint, P.C., ranging
11 between \$650-\$250 per hour;
- 12 2. for Robbins Geller Rudman & Doud LLP, ranging
13 between \$795-\$525 per hour;
- 14 3. for The Evans Law Firm, ranging between \$700-375 per
15 hour; and
- 16 4. for Barrack Rodos & Bacine, ranging between \$715-500
17 per hour.

18 The reasonableness of these billing rates further is supported by the declarations of
19 Class Counsel (Doc. Nos. 189-192), by prior attorneys' fee awards in this and
20 other judicial districts for comparably qualified counsel in comparably complex
21 work, and by published industry billing rates.

22 B. The range of \$295-\$165 per hour billing rate for work performed by
23 certified paralegals is reasonable in light of the experience and qualifications of
24 these non-attorney billers. The reasonableness of this billing rate is supported by
25 recent fee awards for work performed by these paralegals in the relevant market, in
26 comparable litigation, and the submitted declaration of counsel. Paralegal time,
27 which is normally billed to fee-paying clients, is properly included and
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1 reimbursable under a lodestar analysis. *See, e.g. United Steelworkers v. Phelps*
2 *Dodge Corp.*, 896 F. 2d 403, 407-08 (9th Cir. 1990).

3 C. Class Counsel worked a total of 5,018.47 hours, representing a
4 lodestar amount of \$2,016,193.50. The time declared to have been expended by
5 Class Counsel and Class Counsel's paralegals is reasonable in view of the
6 complexity and subject matter of this litigation, and the skill and diligence with
7 which it has been prosecuted and defended, and the quality of the result obtained
8 for the Class.

9 D. The reasonableness of the fee awarded by this Final Approval Order is
10 supported by a "multiplier" analysis, the second requisite step in a lodestar
11 analysis. A fee multiplier is properly applied if supported by appropriate factors,
12 including the extent of the risks of the litigation and the purely contingent nature of
13 the fee award (factors which are not subsumed in Class Counsel's lodestar
14 amount). Here, Class Counsel consisted of four firms: (a) Bonnett, Fairbourn,
15 Friedman & Balint, P.C.; (b) The Evans Law Firm; (c) Robbins Geller Rudman &
16 Dowd LLP; and (d) Barrack Rodos & Bacine. Cumulatively, the thirty lawyers
17 working on the file expended 3,600 hours over a two year period, plus more than
18 1,380 paralegal/law clerk hours, and \$122,622.18 in out-of-pocket litigation
19 expenses—a very substantial commitment given the risk and novelty of the legal
20 issues presented in this Action. Class Counsel's ability to recover fees and
21 expenses in this action was purely contingent upon a successful outcome or
22 settlement. The contingency risks presented by this litigation were significant, as
23 analyzed in the preliminary and final approval motions and supporting
24 declarations. In various procedural postures, American National—through its
25 motion to dismiss and motion for partial summary judgment—vigorously
26 challenged Plaintiff's class allegations. Despite the continuous risk, Class Counsel
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1 tirelessly litigated this action while attempting, in good faith, to achieve a just, fair
2 and amicable resolution.

3 In view of the foregoing contingency/litigation risk factors, which are not
4 subsumed in Class Counsel's lodestar, the Court finds that application of the
5 requested fee multiplier of 1.49 (which supports an award of attorneys' fees in the
6 full unopposed amount of \$3.0 million) is appropriate. Multipliers ranging from 2-
7 4 (and higher) have been approved in comparably complex litigation involving
8 improper marketing and sale of insurance products. *See, e.g. Varacallo v. Mass.*
9 *Mut. Life Ins. Co.*, 226 F.R.D. 207, 255 (D.N.J. 2005); *Snell v. Allianz Life Ins. Co.*
10 *of N. Am.*, No. 97-2784(RLE), 2000 U.S. Dist. LEXIS 13611, at *20 (D. Minn.
11 Sept. 8, 2000); *In re Am. Investors Life Ins. Co. Annuity Mktg. & Sales Prac. Litig.*,
12 263 F.R.D. 226 (E.D. Pa. 2009); Joint Declaration of Andrew S. Friedman and
13 Ingrid M. Evans in Support of Plaintiff's Memorandum in Support of Motion for
14 an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Award, at
15 ¶¶43-44 (Doc. No. 188) ("Joint Declaration" or "Joint Decl."). The requested fee
16 multiplier falls on the low end of the reasonable range, based on typical multipliers
17 approved in comparable litigation, as reflected in the foregoing cases and in the
18 Joint Declaration at paragraphs 43 to 44. The Court approves the requested fee
19 multiplier of 1.49 (thereby limiting the awarded fee to the unopposed amount of
20 \$3.0 million).

21 E. The amount of attorneys' fees approved here by the Court (based on
22 the foregoing lodestar/multiplier) is also reasonable if viewed as "constructive
23 common fund." *See In re Bluetooth Headset Prod. Liab. Litig.*, ___ F.3d ___,
24 No. 09-56683, 2011 WL 3632604, at *5-7 (9th Cir. Aug. 19, 2011) (cross-
25 checking the attorneys' fee award through a "constructive common fund"
26 analysis). Combining the \$3.0 million attorneys' fee award with the entire
27 \$9,059,500 economic benefit results in a "constructive common fund" valued at
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1 \$12,059,500. Under this analysis, the attorneys' fee award represents 24.88% of
2 the Settlement's total economic value. The Ninth Circuit has determined that 25%
3 of the recovery is a "benchmark" award for class action cases and has recognized
4 that percentage fees in the range of 20-30% are generally appropriate. *Hanlon v.*
5 *Chrysler Corp.*, 150 F. 3d 1011, 1029 (9th Cir. 1998); *Six Mexican Workers v.*
6 *Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.1990). The fee award sought
7 in the present case is reasonable when judged by this standard. A fee award at the
8 higher end of the accepted range, under *Hanlon*, is justified here, in part by the
9 same contingency/litigation risk discussed above. The percentage of recovery here
10 is reasonable in light of prior fee awards (measured as a percentage of recovery) in
11 comparable class action litigation, as set forth in the Fee Motion at 8-9.

12 F. Out of approximately 23,000 Class members and more than 23,000
13 Class Notice Packages mailed, including explicit notice of the fees and expenses
14 requested here, there was not a single complaint regarding attorneys' fees.

15 G. Based on the declarations of Class Counsel submitted in support of
16 the Fee Motion, the Court finds that Class Counsel have incurred out-of-pocket
17 litigation expenses (paid and un-reimbursed, or currently due) in an amount more
18 than \$122,000.00, that said expenses were of a nature typically billed to fee-paying
19 clients, and that said expenses were reasonable and necessary to the prosecution of
20 this action in light of the extent of proceedings both on and off the Court's docket,
21 the complexity of the legal and factual issues in the case, the amount at stake in
22 this litigation, and the vigorous efforts of counsel for all parties herein. The Court
23 finds these expenses are reasonable in this case.

24 H. The attorneys' fees awarded by this Final Approval shall be divided
25 among Class Counsel according to Section X.B.6. of the Settlement Agreement.
26 The Court finds the distribution method to be reasonable, as it requires Receiving
27 Class Counsel to allocate such amounts and indemnifies American National for
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1 any claims by law firms, attorneys, financial advisors, expert or counsel relating to
2 services allegedly rendered or unreimbursed interests in the Action up to the
3 amount of the Class Counsel Payment.

4
5 **15. Class Representative Service Award.** The Court hereby approves the
6 service award to Plaintiff and the Estate's separate counsel for the time and
7 expenses associated with their participation in the Action, to be paid by American
8 National at the time and in the manner provided in the Settlement. The amount of
9 said service award shall be the full unopposed amount provided for by the
10 Settlement, *to wit*: five-thousand dollars and no cents (\$5,000) to Deborah L.
11 Dolch and fifteen-thousand dollars and no cents (\$15,000) to the Estate of Daphne
12 P. Rand.

13 Based on the declaration of Class Counsel submitted in support of final
14 settlement approval, Plaintiff actively participated and assisted Class Counsel in
15 this litigation for the substantial benefit of the Class despite facing significant
16 personal limitations. Each has waived their right to pursue potential individual
17 claims or relief in the Action. Apart from the service award, Plaintiff will receive
18 no settlement payments or benefits of any nature other than their share of the
19 Settlement benefits available to the Class generally. These incentives are approved
20 to compensate Debra L. Dolch for legal fees and costs incurred as part of her
21 responsibilities as Special Administrator for Ms. Rand's estate and Ms. Rand for
22 the burdens of her involvement in this litigation and her commitment and effort on
23 behalf of the Class.

24 The amount of these service awards shall not affect or reduce the Settlement
25 relief generally payable to any Class Member, including to Plaintiff, under the
26 Settlement, and shall not affect or reduce the amount of attorneys' fees and
27 litigation expenses payable to Class Counsel under the Settlement and this Final
28 Approval Order.

1
2 **16. Modification of Settlement Agreement.** The Parties are hereby authorized,
3 without needing further approval from the Court, to agree to and adopt such
4 amendments to, and modifications and expansions of, the Settlement Agreement, if
5 such changes are consistent with this Order and do not limit the rights of Class
6 Members or any other Person entitled to Settlement relief under this Agreement.
7

8 **17. Retention of Jurisdiction.** The Court has jurisdiction to enter this Final
9 Order. Without in any way affecting the finality of this Final Order or the Final
10 Judgment, for the benefit of the Class and American National, and to protect this
11 Court's jurisdiction, the Court expressly retains continuing jurisdiction as to all
12 matters relating to the Settlement, and the administration, consummation,
13 enforcement, and interpretation of the Settlement Agreement and of this Final
14 Order, and for any other necessary and appropriate purpose.

15 Without limiting the foregoing, the Court will retain continuing jurisdiction
16 over all aspects of this case including but not limited to any modification,
17 interpretation, administration, implementation, effectuation, and enforcement of
18 the Settlement, the administration of the Settlement and Settlement relief,
19 including notices, payments, and benefits thereunder, the Class Notice Package and
20 sufficiency thereof, any objection to the Settlement, any request for exclusion from
21 the certified class, the adequacy of representation by Class Counsel and/or the
22 Class Representatives, the amount of attorneys' fees and litigation expenses to be
23 awarded Class Counsel, the amount of any service award to be paid to the Class
24 Representatives, any claim by any person or entity relating to the representation of
25 the Class by Class Counsel, to enforce the release and injunction provisions of the
26 Settlement and of this Order, any remand after appeal or denial of any appellate
27 challenge, any collateral challenge made regarding any matter related to this
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1 litigation or this Settlement or the conduct of any party or counsel relating to this
 2 litigation or this Settlement, and all other issues related to this Action and
 3 Settlement.

4 Further, without limiting the foregoing, the Court retains continuing
 5 jurisdiction to:

6 A. enforce the terms and conditions of the Settlement Agreement and
 7 resolve any disputes, claims or causes of action that, in whole or in part, are related
 8 to or arise out of the Settlement Agreement, this Final Order and Judgment
 9 (including, without limitation, determining whether a person is or is not a Class
 10 Member, and enforcing the permanent injunction that is a part of this Final Order
 11 and Judgment), and determining whether claims or causes of action allegedly
 12 related to this case are barred by this Final Order and Judgment;

13 B. enter such additional orders as may be necessary or appropriate to
 14 protect or effectuate this Final Order and Judgment, or to ensure the fair and
 15 orderly administration of the Settlement; and

16 C. enter any other necessary or appropriate orders to protect and
 17 effectuate the Court's retention of continuing jurisdiction; provided however,
 18 nothing in this paragraph is intended to restrict the ability of the Parties to exercise
 19 their rights under the Settlement Agreement.

20
 21 **18. Continuing Confidentiality & Return of Materials.** Pursuant to the
 22 Protective Order issued in this case, (Docket No. 64), on or before the expiration of
 23 two months after the date on which American National is to provide the Settlement
 24 Agreement Section V.E.1.p report, all Confidential Materials produced by either
 25 party, including all materials provided to any expert witness, shall be destroyed or
 26 returned to Counsel for the Designating Party. At that time, Counsel for each party
 27 shall confirm compliance by letter to the opposing side. Any work product
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1 retained by Plaintiff or Class Counsel that is based on or incorporates information
2 provided by American National pursuant to the terms of a protective order shall
3 remain confidential, disclosure and use of such materials is restricted as set forth in
4 the Protective Order.

5
6 **19. No Admissions.** Neither this Final Order and Judgment nor the Settlement
7 Agreement (nor any other document referred to herein) nor any action taken to
8 carry out this Final Order and Judgment, is, may be construed as, or may be used
9 as an admission or concession by or against Defendant, of the validity of any claim
10 or any actual or potential fault, wrongdoing, or liability whatsoever. Entering into
11 or carrying out the Settlement Agreement, and any negotiations or proceedings
12 related to it, shall not in any event be construed as, or deemed evidence of, an
13 admission or concession as to Defendant's denial or defenses and shall not be
14 offered or received in evidence in any action or proceeding against any Party
15 hereto in any court, administrative agency, or other tribunal for any purpose
16 whatsoever, except as evidence of the settlement or to enforce the provisions of
17 this Final Order and Judgment and the Settlement Agreement; provided, however,
18 that this Final Order and Judgment and the Settlement Agreement may be filed in
19 any action against or by Defendant or Released Parties (as defined in the
20 Settlement Agreement) to support a defense of *res judicata*, collateral estoppel,
21 release, waiver, good-faith settlement, judgment bar or reduction, full faith and
22 credit, or any other theory of claim preclusion, issue preclusion, or similar defense
23 or counterclaim.

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25 **20. Dismissal of Action.** This action, including all individual and Class claims
26 resolved in it or that could have been brought in the Action, shall be dismissed on
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1 the merits and with prejudice, without an award of attorneys' fees or costs to any
2 party except as provided in this Order.

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6 SO ORDERED this 22 day of Sept, 2011.

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9 THE HONORABLE SUSAN ILLSTON
10 UNITED STATES DISTRICT JUDGE
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